

Franklin Boenning, Associate  
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Roseland, New Jersey 07068-1791

Dear Mr. Boenning:

I am writing in response to your letter of August 28, 2001 addressed to Mr. William Gallagher, Chief of the Oklahoma/Texas RCRA Permits Section of EPA's Region 6 office. In that letter, you requested a clarification of the applicability of a proposed hazardous waste listing to slag from the production of antimony oxide. Specifically, you requested clarification of the regulatory status of antimony oxide slag generated by Cookson Group at its former antimony oxide production facility in Laredo, Texas. You explain in your letter that Cookson plans to incorporate the slag into an asphalt product.

Unless and until we finalize federal regulations listing the antimony oxide slag as hazardous waste and these regulations become effective, the slag is not subject to regulation as a hazardous waste. A final decision regarding whether or not to list the slag as hazardous will be made by October 31, 2001. The effective date of such a listing will be six months following its publication in the Federal Register.

The management of any secondary material, including the recycling and/or reuse of secondary material in the production of a product, may be subject to regulation under state requirements. Therefore, prior to the effective date of the potential hazardous waste listing for this material, Cookson should comply with all applicable state requirements governing the reuse and recycling of its slag and/or consult with officials in the appropriate state agencies of each state in which the company plans to manage this material.

Your inquiry focuses on the status of an asphalt product managed or disturbed for some reason after it has been used. Under the federal RCRA program, a waste (or a material derived from a waste) actively managed after the effective date of a listing rule would be subject to the listing rule, even if the waste was originally disposed of prior to the effective date. See 53 FR 17586 (May 17, 1988) or 45 FR 33066 (May 19, 1980) and Chemical Waste Management v. EPA 869 F.2d 1526 (1989). In your scenario, however, the slag would be used as an ingredient in a product and the product would be used prior to the effective date of the hazardous waste listing. If some portion of the product is taken out of service and discarded in the future, after the

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effective date of the listing, that discarded material would be a waste. It would be a hazardous waste if it exhibited any of the RCRA hazardous waste characteristics. However, we do not interpret the RCRA statute and regulations to apply the hazardous waste listing to such a waste. Since the listing does not apply at the time of use, the use would not be subject to RCRA jurisdiction. The material would first fall within RCRA jurisdiction when removed from service and disposed of. At that time, the hazardous waste listing would not apply. Regardless of when the slag is used as an ingredient in the manufacture of a product that will be used on the ground, future releases from the material to the environment could be considered to be wastes and could be addressed under Section 7003 of RCRA, if they should cause an imminent and substantial endangerment.

If you have further questions regarding the regulatory status of your secondary material after the effective date of any future federal regulations governing the material, or questions regarding factors considered in evaluating whether the use of hazardous wastes is legitimate recycling under federal regulations, feel free to contact Ingrid Rosencrantz of EPA's Office of Solid Waste at (703) 605-0709.

If you have questions regarding the regulations applicable to the management of secondary material prior to the effective date of any federal regulations listing the waste as hazardous, I suggest that you contact the appropriate state agency in the state or states in which Cookson plans to manage the material.

Sincerely,

Elizabeth Cotsworth, Director  
Office of Solid Waste

cc: William Gallagher, EPA Region 6  
Carl Edlund, EPA Region 6